

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5574 of 1992

AND

SPECIAL CIVIL APPLICATION No 5602 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMESHBHAI SHANKARBHAI PARMAR and anr.

Versus

SANJAY PRASAD

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Appearance:

MR JAYANT PATEL for Petitioners

MISS B.R. GAJJAR, ASSTT. GOVT. PLEADER for Respondents

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 11/04/96

ORAL JUDGEMENT

Both these petitions involve common points and have been argued together. The petitioners were appointed as Peons on 4th September, 1979 and 16th June, 1980 in the Office of the Director of Relief, the respondent No.2 herein. They appeared in the examination for appointment as Clerks and had undergone the training

for the post of Clerk. Having successfully cleared the examination and the training, they came to be promoted as Clerks by order dated 9th October, 1986 in the Office of Director of Relief. The establishment of the Director of Relief was a temporary establishment. Therefore, the Director of Relief had forwarded a proposal to the State Government for regularising the services of these petitioners and creating lien for them on a regular establishment. This aspect came to be carefully considered by the State Government and an order was made on 24th April, 1990 by the State Government, a copy of which is at Annexure "A" to this petition, by which the proposal of the Director for regularising the services of the petitioners on the District Revenue establishment, Gandhinagar in Class IV cadre, was approved on the terms and conditions mentioned in the order. It was accordingly decided by the Government that in relaxation of the Rules these two petitioners should be absorbed in the Office of the Collector, Gandhinagar from the dates of their initial appointments on 5.9.1979 and 18.6.1980. It was further decided that their seniority in the Class IV cadre should be computed by treating them junior most as on the dates of their original appointment viz. 5.9.1979 and 18.6.1980 and be fixed accordingly on the date of these orders. It was further directed that after fixing the seniority of the petitioners in this manner if on the date of these orders they became entitled to continue in the cadre of clerks, then after allowing them to join for one day on the District establishment, they should be appointed on deputation as Clerks in the Office of Director of Relief in the same posts in which they have been working.

After these orders of the Government, the Collector made orders on 20.4.1991 at annexure "F" to the petition, by which despite the clear direction of the Government to absorb the petitioners on the establishment of the District Collector from the dates of their initial appointment, their services were regularised in the Class IV cadre only from the date of the orders made by the Collector i.e. 20.4.1991. The Collector, while passing these orders, stated that the absorption of the petitioners from the initial dates of their appointment i.e. 5.9.1979 and 18.6.1980 as directed by the Government would cause injustice to other Peons on the establishment of the District Collector. Thereafter, the Collector made an order dated 17.8.1992 repatriating the petitioners to the establishment of the Collector as Peons.

It was submitted on behalf of the petitioners

that when the Government had issued directions for fixing seniority of these petitioners from the date on which they were initially appointed, it was not open to the Collector to take a different view of the matter and fix their seniority on the District establishment from the date of the passing of the order of regularisation i.e. 20th April, 1991. It was also contended that the Collector was bound to issue orders placing the petitioners on deputation as Clerks, so that they could continue in the same posts which they were holding in view of the clear directions issued by the Government. The learned Counsel appearing for the respondents argued that the Collector had, taking into account the fact that the interest of Peons already serving in the District establishment would be adversely affected, absorbed the petitioners only from the date of the order dated 20.4.1991. It was submitted that the Collector had infact written to the State Government for reconsidering its order on the ground that the interest of Peons already serving in the District establishment would be adversely affected if the petitioners were to be absorbed from the dates of their initial appointment.

Admittedly, the Government orders issued on 24th April, 1990 which are at annexure "A" to the petition have not been withdrawn or varied. Under these orders, the Government had specifically considered the proposal of the Director for the absorption of the petitioners on a regular establishment. The Office of Director Relief is only a temporary establishment and the posts in that office were required to be filled-in by drawing employees from other regular establishment on deputation. The appointment of the petitioners were made by the Director and therefore, the question arose about their being placed on a regular establishment and giving them lien thereon. The Director therefore, made a proposal to the Government that the petitioners should be absorbed on a regular establishment. The Government, after careful consideration of the proposal, decided to accept the same and absorbed the petitioners on the District establishment at Gandhinagar. It was specifically directed that they should be absorbed with effect from the dates of their initial appointment i.e. 5.9.1979 in case of the petitioner of Special Civil Application No. 5574/92 and 18.6.1980 in case of the petitioner in Special Civil Application No. 5602/92. It was ordered that these petitioners would be treated as having been absorbed in the Class IV cadre of the Revenue establishment of the Collector, Gandhinagar from these dates. In view of these specific orders made by the Government, the Collector had absolutely no option to

give them any subsequent date for the purpose of their absorption. Even if the Collector did not agree with the directions of the State Government, he could not have taken a different view of the matter so long as directions of the State Government remained operative. The petitioners were, as per the Government orders, required to be given seniority from the dates of their initial appointment after treating them as junior most on the dates of initial appointment and having given seniority in that manner on the District establishment, if they were entitled to continue as Clerks, the Collector was required to place them on deputation in the same office in which they were working as Clerks. The Collector has ignored these directions of the State Government and passed an order which is contrary to these directions. The impugned order of the Collector dated 20th April, 1991 at annexure "F" to the petition as also the consequential order dated 17.8.1992 at annexure "B" to the petition cannot therefore be sustained and are hereby set aside. The Collector is directed to issue orders in respect of the petitioners in consonance with the directives given by the State Government in their order dated 24th April, 1990 at annexure "A" to the petition, within four weeks from the date on which the writ of this order is received. Rule is made absolute accordingly in each of these matters with no order as to costs.

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